



April 22, 2016

Ms. Maia Bellon, Director
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

SUBJECT: Washington State's Water Quality Standards: 2016 Draft Rule for Human Health Criteria and Implementation Tools

Dear Director Bellon,

Although I appreciate the efforts of your agency and the associated difficulties in adopting water quality standards that are protective of public health of all citizens in the state, the Washington state water quality standards update process has gone on far too long. I urge you to be guided by the best available science, ensure that the adopted water quality standards are protective of the designated uses of each water body under your jurisdiction, and move rapidly toward adopting updated standards. As you know, the Clean Water Act mandates that public health must be the overriding consideration in the establishment of water quality standards – not the profits of private companies.

As the Lummi Nation has noted in previous comments or correspondence during this multi-year process:

1. We agree with the Washington state position that adopting a more protective fish consumption rate for water quality standards is not a panacea and that Ecology needs to do much more to address the discharges of non-point pollutant sources in Washington State.
2. The proposed 175 g/day fish consumption rate is too low to adequately protect Lummi tribal members from toxic chemicals discharged into the environment.
3. The Lummi people have a treaty right to harvest finfish and shellfish – this right is diminished if the harvested fish cannot be consumed due to contamination or the fish cannot be harvested at all.
4. Contamination of finfish and shellfish habitat, just like reduced instream flows due to out-of-stream diversions, fish passage barriers, elimination of functioning riparian areas, and other factors have put our treaty rights and our *Schelangen* ("way of life") at risk.
5. It is morally and legally wrong for the state to allow large private companies to profit at the expense of the environment and the citizens of the state.

Washington State should as soon as practicable:

1. Use the most current best available science provided by the U.S. Environmental Protection Agency (EPA) to analyze how pollutants accumulate in the food chain. Washington State should adopt the most updated revised national 304(a) criteria or at a minimum be consistent with the national guidance, including relative source contribution and bioaccumulation criteria.
2. Ecology should adopt the EPA proposal for arsenic in the EPA's 2015 proposed rule for human health criteria applicable to Washington state.
3. Ecology should use the updated EPA guidance to develop an updated methyl mercury standard.
4. Ecology should update its water quality standards for polychlorinated biphenyls (PCBs) consistent with the EPA 304(a) guidance.
5. Ecology should align its dioxins criteria, in particular 2,3,7,8-Tetrachloro-dibenzo-p-dioxin (2,3,7,8-TCDD), with the EPA's 2015 proposed rule for Washington.
6. Ecology should modify its rule related to variances, compliance schedules, and other implementation provisions so that any such implementation provisions that could affect the amount of time that permittees would be allowed to continue to violate the water quality standards will only be authorized after consultation with the EPA and affected tribal governments and concurrence in writing from these partners.

The Lummi Nation has been working on a triennial review of our water quality standards and anticipates that revised water quality standards will be issued for public comment during 2017. We are relying on the best available science in the revisions to our water quality standards and if the state does the same, it will be easier to both ensure consistency among the two sets of water quality standards and ensure the Washington standards will be protective of our downstream designated uses.

As you know, the EPA issued a draft rule for human health criteria applicable to Washington State on September 14, 2015. The Lummi Nation can support these more protective criteria as they are based on the best available science and are more closely aligned to the water quality standards that the Lummi Nation expects to seek adoption of during 2017. Hopefully, Washington State can prioritize the protection of public health and the environment over the interests of private companies and conclude this prolonged adoption process in the near future.

Sincerely,



Merle Jefferson, Executive Director,
Lummi Natural Resources Department

Cc: Elden Hillaire, Lummi Fisheries and Natural Resources Commission Chair
Dennis McLerran, EPA Region 10 Administrator
Dan Opalski, EPA Region 10 Director for the Office of Water and Watersheds